

March 20, 2019

Ms. Marie V. Brady
Ecotone Inc.
129 Industry Lane
Forest Hill, MD 21050

RE: Fourth Mine Branch at McGill Property-Stream Restoration
Forest Buffer Variance
Tracking # 03-19-2903

Dear Ms. Brady:

This Department received a request for a variance from the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains on January 25, 2019. The request proposes to temporarily impact approximately 2,000 linear feet of Fourth Mine Branch (Use III). This restoration would include planting riparian buffer and creating wetlands adjacent to the restored stream as well as legally establishing a perpetual, protective easement encompassing the restored stream system wherever one does not presently exist. The proposed disturbance to the stream system, including its Forest Buffer, is necessary for both a stream restoration project being done to provide TMDL credits for the Maryland State Highway Administration (SHA) and to create a mitigation bank for the private sale of mitigation credits.

This Department reviewed your request and has determined that a practical difficulty exists given that the stream restoration and wetland enhancement is not possible without temporarily impacting the stream system and its Forest Buffer. We have also determined that overall impacts to water quality will be minimized in the long term, as the proposed impacts are temporary and serve to provide a stable stream system with functional riparian buffer protected in a permanent easement. The stream restoration would significantly improve water quality and habitat value of the stream system. Furthermore, the full Forest Buffer Easement will ultimately be established over and beyond the smaller Perpetual Easement for Stream Restoration recorded by SHA. The FBE will be recorded along with protective covenants on all portions of the project not presently protected in easement.

Based on the findings above, we will grant this request in accordance with Section 33-3-106 of the Baltimore County Code, with the following conditions:

1. Forest Buffer Easements outside of the Perpetual Easement for Stream Restoration established by SHA shall be delineated in accordance with Section 33-3-111 of the Baltimore County Code along all stream systems onsite not presently in such an easement. This easement shall be recorded in Baltimore County Land Records along with its Declaration of Protective Covenants by revising the Clark-Spruill Record Plat (plat ref. 75/65) or by other means approved by Baltimore County Bureau of Real Estate Compliance prior to reduction of any EPS-held security or December 20, 2019 whichever comes first.
2. Mitigation credit cannot be sold for restored buffer area that was disturbed for the SHA project. The limits of disturbance (LOD) for each project shall not overlap, and SHA's Perpetual Stream Restoration Easement shall not include area that will be restored and sold for mitigation credit. A general note must be provided on the stream restoration plan stating that all Forest Buffer area temporarily disturbed and/or planted for the SHA stream restoration project shall be excluded from the mitigation bank acreage.
3. Given that the project involves a Use III trout stream and the proposed shallow water wetland is immediately adjacent to this stream, the wetland shall be redesigned to prevent the ponding of water deeper than about an inch. Ideally this wetland would have saturated soil up to its surface but no inundation.
4. All unforested or disturbed portions of the Forest Buffer Easement shall be planted with native deciduous species of trees in accordance with an EPS-approved stream restoration plan (i.e. Forest Buffer Protection Plan, or FBPP). At least 50% of the buffer planting must include container-grown tree stock a minimum 5-6 feet high.
5. Surveyed limits of the outer Forest Buffer Easement shall be permanently posted at 100-foot intervals or at any of its corners with "Forest Buffer - Do Not Disturb" signs prior to reduction of any EPS-held environmental securities or December 20, 2019 whichever comes first.
6. The construction drawings (i.e. grading/erosion and sediment control and stream restoration plans) and a final FBPP detailing the buffer planting shall be submitted to EPS staff for review and approval and must reflect the conditions of this variance. The FBPP must include an itemized cost estimate for implementing the mitigation bank portion of the project and be submitted for EPS review and approval. Additionally, these plans must meet all Maryland Department of the Environment (MDE) and U.S. Army Corps of Engineers (ACOE) requirements.

EPS cannot approve the grading and ESC plans for this project until the final FBPP is approved.

7. Prior to grading permit approval, an Environment Agreement shall be signed, and a Forest Buffer Protection security based on 110% of the aforementioned cost estimate for implementing the mitigation bank plan shall be posted with EPS. No FBPP security will be required for the SHA portion of the project, as that will be secured separately with the State of Maryland.
8. The following note must appear on all plans submitted for this project:

A variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains on March 20, 2019. The Forest Buffer Easement and/or similar conservation easement shown hereon is reflective of this variance. Conditions were placed on this variance to reduce water quality impacts including posting of protective signage along the protective easement as well as riparian buffer planting onsite.

9. Documentation of MDE and ACOE authorization of the restoration must be provided to EPS prior to issuance of any Baltimore County permit.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely yours,

David V. Lykens
Acting Director

DVL:ges

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- c. Scott McGill, Property Owner
Ryan Cole, Maryland State Highway Administration

I/we agree to the above conditions to bring my/our property into compliance with Law
for the Protection of Water Quality, Streams, Wetlands and Floodplains.

Property Owner's Signature

Date

Property Owner's Printed Name